UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	§	
Plaintiff.	§	
vs.	§	CIVIL ACTION NO. H-04-3788
U-HAUL CO. OF TEXAS, d/b/a U-HAUL CO. OF NORTH HOUSTON and U-HAUL INTERNATIONAL, INC.,	§	
Defendant.	§	

MEMORANDUM AND ORDER

Before the court[1] is defendant U-Haul International, Inc.'s ("U-Haul International") motion for a more definite statement (Dkt. No. 7) pursuant to Federal Rule of Civil Procedure 12(e), and the EEOC's response (Dkt. No. 15). For the reasons explained below, this motion is DENIED.

A motion for more definite statement under Rule 12(e) is generally disfavored and is used to provide a remedy only for an unintelligible pleading rather than a correction for lack of detail. *See Davenport v. Rodriguez*, 147 F. Supp. 2d 630, 639 (S.D. Tex. 2001); *Nebout v. City of Hitchcock*, 71 F. Supp. 2d 702, 706 (S.D. Tex.

[1]This motion was referred to this magistrate judge for determination pursuant to 28 U.S.C. § 636(b)(1) (Dkt. No. 10).

1999). Such a motion is appropriate where a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading. *See* FED. R. CIV. P. 12(e); *DVI Bus. Credit Corp. v. Crowder*, 193 F. Supp. 2d 1002, 1009 (S.D. Tex. 2002). It is not appropriate as a substitute means for discovery. *See Mitchell v. E-Z Way Towers, Inc.*, 269 F.2d 126, 132 (5th Cir. 1959); *Nebout*, 71 F. Supp. 2d at 706. This is because the Federal Rules of Civil Procedure require only that a complaint include "a short and plain statement of the claim showing that the pleader is entitled to relief" and such a statement must simply "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

Defendant U-Haul International, as distinguished from defendant U-Haul Co. of Texas ("U-Haul Texas"), contends that it cannot file an answer to the EEOC's complaint because the EEOC has unfairly lumped together U-Haul International and U-Haul Texas, without bothering to separate out the particular claims against U-Haul International or even to show that U-Haul International is a proper party (i.e., employer of the charging parties). U-Haul International requests that the EEOC be required to state in more definite terms the separate and distinct allegations it has against U-Haul International, as opposed to U-Haul Texas.

The EEOC counters that discovery is the proper method of determining whether U-Haul International employed any of the charging parties, rather than requiring it to re-plead with a more definite statement. The EEOC also attached to its response a payroll check issued by U-Haul International to Tammy Jones, one of the women claiming to have been discriminated against, as well as EEOC determination letters addressed to both U-Haul International and U-Haul Texas.[2]

Although a motion for a more definite statement is generally disfavored, some courts have granted such motions where a multi-count complaint against multiple defendants failed to identify the specific defendants charged with each cause of action. For instance, in *Caraveo v. Nielsen Media Research, Inc.*, 2002 WL 530993, at *2 (S.D.N.Y. 2002), a court granted a 12(e) motion where thirty causes of action were brought against twenty-five defendants without identifying which claims were being asserted against which defendant. In *Bower v. Weisman*, 639 F. Supp. 532, 538 (S.D.N.Y. 1986), the court granted a motion for a more definite statement where a plaintiff brought seven causes of action against three defendants because the individual defendants could not effectively respond to the plaintiff's complaint without knowing which claims were being asserted against which defendant. And in *Khalid v. E.F. Hutton & Co. Inc.*, 720 F. Supp. 671, 685-86 (N.D. Ill. 1989), a motion for a more

[2]*See* Dkt. No. 15, Exs. 2, 3, 4.

definite statement was granted where several defendants were merely referenced in general. *Id.* at 685-86.

Here, however, there are only two defendants, and the causes of action brought against them in the EEOC's complaint are fairly clear: sexual discrimination, unlawful retaliation, and failure to make and preserve records as required by Title VII. These claims are not so vague or ambiguous, as in some of the above cases, that U-Haul International cannot reasonably frame a responsive pleading to these allegations. The complaint gives U-Haul International fair notice of the claims and the grounds upon which they rest, as required by Federal Rule of Civil Procedure 8(a)(2). *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

Moreover, U-Haul International's argument that the complaint is insufficient because it does not allege that it employed the charging parties is unconvincing. The complaint does allege that both U-Haul Texas and U-Haul International have each "continuously been an employer engaged in an industry affecting commerce" within the meaning of Title VII. *See* Compl., ¶¶ 5, 7, at 2. The case law does not suggest that a motion for a more definite statement is warranted to require a plaintiff state which of two defendants was "the" employer when there is some ambiguity. For instance, in *Metrakos v. New York Cent. R.R. Co.*, 12 F.R.D. 177, 178 (N.D. Ohio 1951), and in *United States v. Carolina Warehouse Co.*, 4 F.R.D. 291, 293 (W.D.S.C. 1945), there

was some doubt as to which of two defendants were liable. Those courts pointed to Federal Rule of Civil Procedure 20 to explain that the plaintiffs were entitled to join in one action all persons against whom they asserted a right to relief jointly, severally, or in the alternative. *Metrakos*, 12 F.R.D. at 178; *Carolina Warehouse*, 4 F.R.D. at 293.

Furthermore, if two nominally distinct entities are sufficiently interrelated, they may both be exposed to liability under Title VII. *See, e.g., Trevino v. Celanese Corp.*, 701 F.2d 397, 403-04 (5th Cir. 1983); *see also Schweitzer v. Advanced Telemarketing Corp.*, 104 F.3d 761, 763 (5th Cir. 1997) (explaining that in civil rights actions, superficially distinct entities may be exposed to liability upon a finding that they represent a single, integrated enterprise). Thus, if the EEOC in this case proves that there is sufficient integration between U-Haul International and U-Haul Texas, both defendants can potentially be held liable under Title VII. The motion for a more definite statement to require the EEOC to, in effect, pick either U-Haul Texas or U-Haul International as the single purported employer, presents a false dichotomy.

Accordingly, defendant U-Haul International's motion for a more definite statement is DENIED.

Signed on December 9, 2004, at Houston, Texas.

Stephen Wm. Smith
United States Magistrate Judge